

1 SONYA D. WINNER (SBN 200348)
2 Email: swinner@cov.com
3 CORTLIN H. LANNIN (SBN 266488)
4 Email: clannin@cov.com
5 ISAAC D. CHAPUT (SBN 326923)
6 Email: ichaput@cov.com
7 COVINGTON & BURLING LLP
8 Salesforce Tower
9 415 Mission Street, Suite 5400
10 San Francisco, California 94105-2533
11 Telephone: (415) 591-6000
12 Facsimile: (415) 591-6091

Attorneys for Defendant/Counterclaimant
13 INTUITIVE SURGICAL, INC.

14 [Additional counsel listed on signature page]

15
16 **UNITED STATES DISTRICT COURT**
17 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
18 **SAN FRANCISCO DIVISION**

19 SURGICAL INSTRUMENT SERVICE
20 COMPANY, INC.,

21 Plaintiff/
22 Counterclaim-Defendant

23 vs.

24 INTUITIVE SURGICAL, INC.,

25 Defendant/
26 Counterclaimant.

ALLEN RUBY (SBN 47109)
allen@allenruby.com
ALLEN RUBY, ATTORNEY AT LAW
15559 Union Ave. #138
Los Gatos, California 95032
Telephone: (408) 477-9690

Case No.: 3:21-cv-03496-AMO-LB

**INTUITIVE SURGICAL, INC.'S RESPONSE
TO THE COURT'S SUMMARY JUDGMENT
EVIDENTIARY CLARITY REQUESTS**

Judge: The Honorable Araceli Martínez-Olguín

Intuitive Surgical, Inc., submits the following in response to the Court's Evidentiary Clarity requests at the motions hearing held September 7, 2023. Page citations are to the ECF pagination. Publicly filed docket citations with no page citations reflect that a document was filed under seal in its entirety.

REQUEST: FDA messages to third-party service providers, including Rebotix, SIS, and any others.

Exhibit	Description	Publicly Filed Docket Entry	Sealed Docket Entry
Cahoy Ex. 10	Expert Report of Christy Foreman (submitted in this case)	ECF No. 137-13 at 38–52 (¶¶ 102–142); 54–57 (¶¶ 149–154, 157); 72–79 (¶¶ 217–235); 80–82 (¶¶ 242–245), and record materials cited and quoted therein	ECF No. 138-3 at 38–52 (¶¶ 102–142); 54–57 (¶¶ 149–154, 157); 72–79 (¶¶ 217–235); 80–82 (¶¶ 242–245), and record materials cited and quoted therein
Cahoy Ex. 22	Emails re “Rebotix AI Letter Conference Call Follow-Up” (REBOTIX077729 – REBOTIX077734)	ECF No. 137-25	ECF No. 138-11 at 6
Cahoy Ex. 23	Email from FDA to Ryan Burke (REBOTIX171058)	ECF No. 137-26	ECF No. 138-12 at 2
Cahoy Ex. 31	Emails between BPI Medical, Rebotix, and FDA re EndoWrists (BPI000331 – BPI000337)	ECF No. 137-34	ECF No. 138-18 at 5–8
Cahoy Ex. 32	FDA Deficiency Letter re Rebotix “Remanufactured EndoWrists” (REBOTIX171030 – REBOTIX171057)	ECF No. 137-35	ECF No. 138-19 at 2–29
Cahoy Ex. 34	Emails re “Request for More Information on Rebotix Repair Repairing/Service Activities” (REBOTIX146948 – REBOTIX146955)	ECF No. 137-36	ECF No. 138-20 at 2; 6–9

Exhibit	Description	Publicly Filed Docket Entry	Sealed Docket Entry
Cahoy Ex. 35	FDA Letter No. CPT2000126 to Rebotix (REBOTIX175417 – REBOTIX175418)	ECF No. 137-37	ECF No. 138-21 at 2–3
Cahoy Ex. 37	Emails re “Rebotix Repair, LLC re Document Number CPT200126” (REBOTIX175839 – REBOTIX175843)	ECF No. 137-39	ECF No. 138-23 at 2–6
Cahoy Ex. 38	Emails re “Restore Robotics -- Request for More Information (Restore-00001248 – Restore-00001256)	ECF No. 137-40	ECF No. 138-24 at 2–10
Cahoy Ex. 41	FDA Deficiency Letter re Iconocare 8mm Monopolar Curved Scissors (AHP000527 – AHP000537)	ECF No. 137-43	ECF No. 138-27 at 2–12
Cahoy Ex. 42	Emails re Iconocare Deficiency Notice (Restore-00086093 – Restore-00086120)	ECF No. 137-44	ECF No. 138-28 at 2–7; 9–26; 28–29
Cahoy Ex. 64	Emails re “Rebotix Repair, LLC re Document Number CPT200126” (REBOTIX175710 – REBOTIX175730)	ECF No. 137-47 at 2–10; 12–21	N/A

REQUEST: Statement from Intuitive’s experts that third-party EndoWrist Modifications constituted remanufacturing.

Exhibit	Description	Publicly Filed Docket Entry	Sealed Docket Entry
Cahoy Ex. 10	Expert Report of Christy Foreman (submitted in this case)	ECF No. 137-13 at 10–11 (¶ 16(b)); 52–57 (¶¶ 143–154); 60–66 (¶¶ 165–193); 68–72 (¶¶ 200–216); 89 (¶ 266); 90–91 (¶ 270)	ECF No. 138-3 at 10–11 (¶ 16(b)); 52–57 (¶¶ 143–154); 60–66 (¶¶ 165–193); 68–72 (¶¶ 200–216); 89 (¶ 266); 90–91 (¶ 270)

REQUEST: Statements from Intuitive and its experts stating that EndoWrist use limits are appropriate.

Exhibit	Description	Publicly Filed Docket Entry	Sealed Docket Entry
Rosa Decl.	Declaration of David Rosa	ECF No. 137-2 at 5–9 (¶¶ 22–35); 11–12 (¶ 45)	N/A
Cahoy Ex. 5	Excerpts of the Deposition of Margaret Marie Nixon (Oct. 7, 2022) (taken in this case)	ECF No. 137-10 at 5–8	N/A
Cahoy Ex. 10	Expert Report of Christy Foreman (submitted in this case)	ECF No. 137-13 at 10–12 (¶ 16(b), (d)); 31–38 (¶¶ 75–101); 79–82 (¶¶ 236–245), and record materials cited and quoted therein	ECF No. 138-3 at 10–12 (¶ 16(b), (d)); 31–38 (¶¶ 75–101); 79–82 (¶¶ 236–245), and record materials cited and quoted therein
Cahoy Ex. 66	Excerpts of the Deposition of Disha Peswani (Oct. 6, 2022) (taken in this case)	ECF No. 137-49 at 3–12	N/A
Cahoy Ex. 73	Excerpts of the Deposition of Nickola “Nicky” Goodson, 30(b)(6) designee for Intuitive (Oct. 27, 2022) (taken in this case)	ECF No. 137-52 at 4–6	N/A
Cahoy Ex. 75	Expert Report of Dr. Robert D. Howe (submitted in this case)	ECF No. 137-54 at 11–12 (¶¶ 16–17); 37–44 (¶¶ 62–74), and record materials cited and quoted therein	ECF No. 136-2 at 11–12 (¶¶ 16–17); 37–44 (¶¶ 62–74), and record materials cited and quoted therein ECF No. 138-31 at 11–12 (¶¶ 16–17); 37–44 (¶¶ 62–74), and record materials cited and quoted therein
Smith Ex. 1	Expert Antitrust Merits Rebuttal Report of Dr. Loren K. Smith (submitted in this case)	ECF No. 137-6 at 25–27 (¶¶ 32–33); 95–96 (¶ 144); 100–102 (¶¶ 151–152), and record materials cited and quoted therein	ECF No. 138-45 at 25–27 (¶¶ 32–33); 95–96 (¶ 144); 100–102 (¶¶ 151–152), and record materials cited and quoted therein

REQUEST: Record evidence of Iconocare's 510(k) clearance.

Exhibit	Description	Publicly Filed Docket Entry	Sealed Docket Entry
Cahoy Ex. 10	Expert Report of Christy Foreman (submitted in this case)	ECF No. 137-13 at 41–51 (¶¶ 111–38); 56 (¶¶ 152–53), and record materials cited and quoted therein	ECF No. 138-3 at 41–51 (¶¶ 111–38); 56 (¶¶ 152–53), and record materials cited and quoted therein
Cahoy Ex. 75	Expert Report of Dr. Robert D. Howe (submitted in this case)	ECF No. 137-54 at 75–76 (¶¶ 138–140), and record materials cited and quoted therein	ECF No. 136-2 at 75–76 (¶¶ 138–140), and record materials cited and quoted therein ECF No. 138-31 at 75–76 (¶¶ 138–140), and record materials cited and quoted therein
Cahoy Ex. 40	Iconocare 510(k) Clearance (SIS357813 – SIS357818)	ECF No. 137-42	ECF No. 138-26

DATED: September 11, 2023

By: /s/ Kathryn E. Cahoy

KATHRYN E. CAHOY

*Attorney for Intuitive Surgical, Inc.**Additional Counsel for Intuitive Surgical, Inc.*

ALLEN RUBY (SBN 47109)

allen@allenruby.com

ALLEN RUBY, ATTORNEY AT LAW

15559 Union Ave. #138

Los Gatos, California 95032

Telephone: (408) 477-9690

KAREN HOFFMAN LENT (*Pro Hac Vice*)

Email: karen.lent@skadden.com

MICHAEL H. MENITOVE (*Pro Hac Vice*)

Email: michael.menitove@skadden.com

SKADDEN, ARPS, SLATE, MEAGHER &
FLOM LLP

One Manhattan West

New York, NY 10001

Telephone: (212) 735-3000

Facsimile: (212) 735-2040

JOSHUA HILL (SBN 250842)

JHill@paulweiss.com

KATHRYN E. CAHOY (SBN 298777)

Email: kcahoy@cov.com

COVINGTON & BURLING LLP

3000 El Camino Real

5 Palo Alto Square, 10th Floor

Palo Alto, California 94306-2112

Telephone: (650) 632-4700

Facsimile: (650) 632-4800

SONYA WINNER (SBN 200348)

Email: swinner@cov.com

CORTLIN H. LANNIN (SBN 266488)

Email: clannin@cov.com

ISAAC D. CHAPUT (SBN 326923)

Email: ichaput@cov.com

COVINGTON & BURLING LLP

Salesforce Tower

415 Mission Street, Suite 5400

San Francisco, California 94105-2533

Telephone: (415) 591-6000

Facsimile: (415) 591-6091

1 PAUL, WEISS, RIFKIND, WHARTON &
2 GARRISON, LLP

3 535 Mission Street, 24th Floor
4 San Francisco, California 94105
5 Telephone: (628) 432-5100
6 Facsimile: (628) 232-3101

ANDREW LAZEROW (*Pro Hac Vice*)

Email: alazerow@cov.com

ASHLEY E. BASS (*Pro Hac Vice*)

Email: abass@cov.com

JOHN KENDRICK (*Pro Hac Vice*)

Email: jkendrick@cov.com

COVINGTON & BURLING LLP

One City Center 850 Tenth Street NW

Washington DC 20001-4956

Telephone: (202) 662-6000

Facsimile: (202) 662-6291